

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

PAUL MCCURLEY, III, INDIVIDUALLY AND)
ON BEHALF OF ALL SIMILARLY SITUATED)
INDIVIDUALS,)

Plaintiffs,)

v.)

FLOWERS FOODS, INC. AND DERST)
BAKING COMPANY, LLC,)

Defendants.)

CIVIL ACTION NO:
5:16-cv-00194-JMC

**JOINT STIPULATION AS TO THE INFORMATION
REQUESTED BY THE COURT’S ORDER [69]**

COME NOW Defendants Flowers Foods, Inc., Derst Baking Company, LLC, and Plaintiff Paul McCurley, III (collectively, “the Parties”), by and through their undersigned counsel, and stipulate to the following information.

I. Introduction

On July 18, 2016, Plaintiff Paul McCurley filed a Motion for Conditional Certification and Judicial Notice. [Dkt. No. 45.] Therein, Plaintiff sought an order requiring that: (1) potential class members be provided sixty days from the date that a notice is mailed to them to file consents to join the lawsuit; (2) Plaintiff be permitted to send out “reminder” postcards to potential class members thirty days after the notice is mailed; and (3) Derst be required to post the notice at its warehouses. [Dkt. No. 45-1.] In connection with his Motion, Plaintiff also attached a Proposed Notice. [Dkt. No. 45-2.]

On October 24, 2016, the Court granted Plaintiff’s Motion for Conditional Certification. [Dkt. No. 69.] In the Order, the Court invited Defendants “to submit additional briefing regarding (1) the inclusion in the class of distributors who have signed an arbitration agreement

and (2) their objections to Plaintiff's proposed Notice." *Id.* at 11. The Parties have conferred and have agreed to the following stipulation as to all three topics.

II. The Parties Agree and Stipulate that Notice Should Not Be Sent to Distributors Who Have Signed the Arbitration Agreement and Class Action Waiver

Counsel for the Parties have conferred and stipulate that distributors who have signed an arbitration agreement and class action waiver should be excluded from the putative class and that those individuals should, therefore, not receive notice of the collective action.

The Parties also stipulate that Defendants will provide to Plaintiff a separate list of the distributors who have signed an arbitration agreement and class action waiver, along with copies of the signed agreements. The Parties stipulate that the distributors on this separate list will not receive notice of the collective action.

The Parties attach a Revised Proposed Notice and Consent Form, attached as Exhibit A hereto.

III. The Parties Agree and Stipulate that Notice Will Not Be Posted in the Derst Warehouses, No "Reminder" Postcards Will Be Mailed, and Defendants Will Bear the Costs of Notice Administration

Counsel for the Parties have conferred regarding the remaining disputed issues associated with the notice. As a result of these discussions, the Parties agree and stipulate to the use of an independent claims' administrator to administer notice to the members of the conditionally-certified class, with an agreed-upon process for forwarding notification of those who opt-in and any inquiries to Plaintiff's counsel.

In lieu of the reminder notice and notice posting at the Derst warehouses, the Parties agree that Defendants shall bear the costs of notice administration.

Dated this 31st day of October 2016.

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